SPEECH

OF

MR. HAMER, OF OHIO,

ON THE

KENTUCKY CONTESTED ELECTION;

DELIVERED IN THE

HOUSE OF REPRESENTATIVES OF THE U. STATES,

MAY 22, 1834.

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1834.

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In the House of Representatives May 22, 1834, on the following resolution of the Committee of Elections: viz.

Resolved, That Thomas P. Moore, Esq. is entitled to the seat in *this* House, to represent the 5th Congressional District of the State of Kentucky.

And the following amendment submitted by Mr. BANKS, as follows:

"That all the legal votes which were received in Lancaster, Garrard county, whilst Moses Grant, Esq. acted as one of the judges, on the first morning of the election, in August last, and those of a like character, given on the second day of the election in the casual absence of the Sheriff, ought to be estimated in ascertaining the result of the election."

Mr. HAMER rose and said:

Mr. Speaker, before I proceed to submit my views of the question now pending before the House, I trust I shall be indulged in making a single remark, in reference to myself.

I concur with the gentleman from New York, (Mr. Vanderpoel,) who addressed the House the other day, and who is a member of the Committee of Elections. He informed us, that it was not by his desire, that he had been placed on that committee. So of myself, sir. Although I have never sought to avoid any responsibility, that devolved upon me, in the several stations I have had the honor to occupy, still I have never courted it when it did not belong to me. With a knowledge of the business that must come before the committee of elections, I should have been very unwise, at the commencement of this session, to have desired a place among its members. But, sir, I was placed upon it, by the presiding officer of this House, and I have endeavored to discharge my duty faithfully. It was the fortune—good or bad—of the gentleman from Pennsylvania, (Mr. Banks,) and myself, to be selected as a sub-committee, to examine the immense mass of testimony, consisting of some 1800 pages in manuscript, and making a large volume, now that it is in print, that had been taken by the respective claimants to a seat on this floor. Nearly five hundred votes were assailed as illegal. Some were said to be given by minors; others by aliens; others again, by persons who were not residents of the county where they voted; and a variety of other disqualifications were alleged to exist.

In some instances, three, four, or five witnesses were examined to prove the illegality of a vote; and three or four depositions would be taken, to assail the credibility of one of these witnesses. Indeed, the case presented for our examination, almost every question that can be imagined to exist in a contested election. We labored upon it, as is known to a number of gentlemen, night and day, for many weeks, until my own health was seriously impaired. Upon a large majority of the points presented to us, we agreed: upon some we differed. Having travelled through it, the majority and the minority of the committee have each submitted the results of their examination to the House. From the fact of my having served upon the sub-committee, it is expected that my views of the question will be made known in this discussion.

One word more, sir, and I proceed. I hope it will be distinctly understood, that in whatever terms I may feel myself impelled to speak of the arguments of gentlemen, I mean no personal disrespect. I have no unkindness of feeling towards either of the claimants, or for any gentleman who has spoken in the progress of this discussion on either side of the question. It is not my habit to impugn the motives of others, or to give an uncharitable construction to their conduct; and pursuing that course towards those who differ with me, should it be my misfortune, either now or hereafter, to have my own motives assailed, or my conduct misrepresented, I trust I shall know how to repel all such assaults with the spirit that becomes a freeman.

The majority of the committee find themselves placed in a most singular condition. They are charged by the minority with erroneous decisions, in a number of cases where votes have been stricken from Mr. Letcher's poll; and it is said by gentlemen, that if these cases had been correctly determined, Mr. L. would have had a majority of all the votes of the District, and would be entitled to the seat. On the other hand, Major Moore has laid a printed argument upon our tables, accompanied by a list of some forty or fifty votes, which were retained by the majority for Mr. L. that he (Mr. M.) asserts should be stricken off; thereby making the majority for him much larger than it is now. Thus we are standing between two fires: both parties complain of our decisions. Under such circumstances, there is but one course for us to take; and so far as I am concerned, but one will be taken: it is to proceed directly forward, regardless of the consequences, be them what they may.

I agree sir, with the gentlemen who have preceded me, that this is a question of deep importance. It is important to the claimants, because it involves the right to a seat on this floor; it is important to the People of the Fifth Congressional District—and, indeed, of the whole State of Kentucky, as affecting their representation in this branch of the government; and it is important to this House and to the American People; for the decision now made, will be looked to, as a beacon, for the guidance of those, who may have to determine similar cases in after times. It behooves us, therefore, to proceed with caution and deliberation; to weigh well every argument, that may be presented; and to so decide, as that vital principle may be preserved inviolate, and substantial justice meted out to all concerned.

To discuss this subject, in the manner best calculated to present its merits clearly and intelligibly to those who hear me, it becomes necessary to relieve it from some of the incumbrances that have been heaped upon it, by the gentlemen who have preceded me. It often happens that we mislead both ourselves and others, in discussing a question, by making false issues, and by incorporating extraneous matters, that do not properly belong to the subject. These are so many false lights that lead us astray in the pursuit of truth. They should be extinguished; for their glare upon our mental vision, has a direct tendency to obscure the object which they were designed to illuminate.

One prominent position has been taken by the minority of the committee, and by all the gentlemen who have spoken upon that side of the House, which I am bound to notice. They charge the majority with advancing the doctrine, that an individual having a minority of the votes in the Fifth District, is entitled to a seat on this floor. Sir, I deny this charge. The committee have advanced no such doctrine in their report; and not a single member of it has advocated such a principle. For myself, I wholly repudiate it. We have not only not contended for any such principle; but we have said, expressly, that after a full and thorough purgation of the polls—counting in as legal, all the votes given at Lancaster on Monday, whilst Esquire Grant was on the bench, and all given during the absence of the Sheriff on Tuesday, still there was a clear majority of the individual votes in favor of Major Moore. We contend for the doctrine that a majority shall rule, as strenuously as the gentlemen do. Indeed, both the candidates maintained their claims before us upon this principle. It was the main question to be determined by the committee. Each of the claimants contended, that after striking off all illegal, individual votes, he had a majority of what remained. The legality of the votes given at Lancaster, on Monday and Tuesday, was a question upon which the committee felt bound to give an opinion, because it was one that would probably come before the House. But, independently of that question, they found a majority of votes for Major Moore.

Why, then, are we charged with maintaining that a minority is to prevail over a majority? I ask the gentlemen, whether, in ascribing to us such sentiments, they treat us with the fairness to which we are justly entitled?

Again, sir: A disinterested listener, who was unacquainted with the merits of this controversy, would suppose, from the speeches of gentlemen, that we were about to overthrow the dearest rights that belong to the People of this great Republic. One gentleman (Mr. Marshall) declares that the sense of the country will put down our doctrine; and he asks, most triumphantly, whether this is a principle by which any gentleman is willing to stand in this country? Why, sir, this would all be very appropriate, if the committee had attempted to sustain the proposition ascribed to them; but I have already stated, that they do not. Their report rests upon no such sandy foundation. It stands upon the great fundamental principle, that the majority shall rule. It recognises the rights of the People, as secured by their own institutions. And I tell the gentleman, in answer to his question, that by this principle, and these institutions, I am willing to take *my stand;* and to risk, in so doing, what little reputation I now possess, or may hereafter live to acquire.

The conduct of Alfred Hocker, the Sheriff of Lincoln, has been alluded to, by all the gentlemen who have addressed the House upon the other side. It has been called "disgraceful;" the term "*hocus pocus*" was applied to it by the gentleman from Georgia (Mr. Clayton.) His conduct, right or wrong, has nothing to do with the question now before us. It is the conduct of Thomas Kennedy, the Sheriff of Garrard, that is under consideration.

No one has attempted to justify the act of Mr. Hocker, in withholding the poll-book of Lincoln, as a legal act. The committee have expressly condemned it. Major Moore, in whose favor it operated, does not pretend to justify it as legal. He claims nothing under it. But the act itself, and the motives of the individual, are two distinct considerations; and this man, whose name has been loaded with maledictions, is proved to possess a most excellent character—to be an upright, honest, and patriotic citizen. His motives were, no doubt, good, and his acts resulted from what is supposed to be a wrong construction of the law. Let us see if there is nothing to palliate his offence.

The law provides that the Sheriffs shall meet within fifteen days after the election, and by a faithful comparison and addition of the votes given in the several counties, ascertain who is elected, and make out his certificate. Mr. Hocker believed that the Sheriffs, when so met, composed a board, having the right to decide upon the validity of a poll-book; and if the election, in any one precinct, had been held in open violation of law, that they had a right to reject the votes so given. In this opinion he may have been wrong; yet the language of the law affords a plausible excuse for the sentiments he avowed.

Finding that the Sheriffs would not enter into such an examination as he desired—believing that the votes about to be counted ought not to be considered in *a faithful comparison and addition*—he retired with his poll-book, leaving the question to

be decided by the constituted authorities of the country.

It has been said, in the course of this debate, that the certificate of the three Sheriffs proves nothing; that, not being made pursuant to the law, it is void; that Major Moore claimed a seat here upon such a certificate; that Mr. Letcher ought to have had the seat, upon the copies of the poll-books which he presented; and, says the gentleman from Georgia, (Mr. Clayton,) the ground *is now changed* in favor of the former; and it is contended that *a minority of votes* shall entitle him to a seat here! The validity of such a certificate is not now a legitimate subject of discussion. It has no connexion whatever with the point before the House; but I beg leave to set the gentleman right, with regard to the respective positions of the two claimants, throughout this whole contest.

At the commencement of the session, there was nothing in dispute but the right to a *temporary seat* in the House. Each party claimed it; one upon the copies of the poll books, and the other, upon a certificate signed by three Sheriffs of the Congressional District—the law requiring all the Sheriffs to sign it. Neither of them had the evidence, strictly speaking, which the law required. Neither of them contended for a *permanent* seat here, upon such evidence. The right to that, they both admitted, would depend upon a majority of the votes given in the District, after a thorough purgation of the polls. Precisely that doctrine have they both contended for, ever since. In all their communications with the committee, they rest their claims upon this principle; and each one insists, that he has such a majority.—Their claims to a temporary seat, we all know, were waived, and the whole matter referred to the committee. How, then, has the ground been changed? Why does any gentleman indulge himself in throwing out reflections upon one candidate, and not upon the other? I deny, sir, that the ground has been changed. The right to a *permanent seat* is still claimed, by both candidates, as it has been from the first, by virtue of a majority of the individual votes. Who has this majority, is the question now to be determined by the House.

Here, I cannot but notice a remark that fell from the gentleman from Georgia, (Mr. Clayton,) who is not a member of the committee. He declared, that he believed this case would be decided wrong! For my own part, I entertain no such fears. I will not anticipate an erroneous decision, by this House, of any question. To the apprehensions of gentlemen, that party influence will be brought to bear upon the minds of honorable members, I will not speak in reply. It should be presumed, I think, that all will act from pure motives, and sound and honest principles.

Various cases have been presented, by way of argument and illustration, from the election laws of Georgia, Pennsylvania, and Kentucky. I do not feel bound to answer the inquiries they propose, because they have no direct bearing upon what is believed to be the true issue before the House. They may serve to amuse and instruct us, upon other points; but it is most important that we consider the question upon which we have to decide.

The gentleman from Kentucky (Mr. Hardin,) who last addressed the House, expressed his surprise and regret, that the committee had not decided two very important questions, as he conceived them to be. The first was, whether the Sheriff could, under any circumstances, open the polls before 10 o'clock. The other was, whether the certificate, made out by the three Sheriffs, and transmitted to this House by the executive; or, copies of the poll books, furnished the best evidence of the number of votes received by the candidates. Now, the answer to all this is easily given. The committee did not feel themselves called upon, to decide either of the points named; because they arrived at a final termination of the whole case, without such decision. Take either the poll books, or the certificate, as evidence of the number of votes received, and Maj. Moore has a majority. Count all the votes taken before 10 o'clock, at Lancaster, or exclude them; and in either event, he has still a majority. Although these questions were presented to the committee, as a great many points are presented in argument to a Court or jury, by counsel; still, they no more considered themselves obliged to decide upon them, than the Court feels bound to adjudicate upon all the points raised by the advocates, during the trial. They find one or two principal points, upon which the whole case turns, and decide them; leaving the others for some future occasion, when necessity may require a solemn judgment upon them.

That gentleman presented another very grave inquiry. It was—"what is a day?" As the constitution of Kentucky gives a day to the electors for exercising their right of suffrage, he contended that the Legislature could not limit them in the exercise of the right to certain hours of the day. Any such attempt, he thinks, would be unwarranted; any such law would be unconstitutional. I am not disposed to enter the arena with the gentleman, to discuss so serious a question. If he chooses to nullify the law, let him do so. If he determines constitutional questions by a literal application of the language employed in the charter, then, his criterion is different from the one which I have been accustomed to regard as the truer and safer rule. To carry out the principle, would involve us in great difficulties. In almost every American constitution, there is a clause, which declares, substantially, that justice shall be administered, without sale, denial, or delay. Suppose you owe me a sum of money, but fail to pay it on the day the debt becomes due. I am entitled to justice without delay. It is a constitutional right. The law ought to provide, according to the principles of the gentleman, for *an immediate* arrest, trial, judgment, and sale of property, or person, or imprisonment of the latter at least. There must be no security taken for the defendant's appearance at Court—no time allowed to prepare for trial—no stay of execution. These would occasion delay; and a law, allowing the debtor such privileges, would be unconstitutional! Surely the gentleman does not contend for a mode of interpretation, that would lead to such extravagant consequences? I apprehend, sir, that the true rule

is, to give all these clauses a *reusonable construction;* one that is consistent with the general principles and scope of the instrument, and with the manifest intention of those who framed it.

Whilst upon this subject, I will take occasion to say, that to my mind, there is a striking incongruity in the doctrines of some gentlemen. At one time they adhere to *the very words* of the constitution and laws of Kentucky. They are strict constructionists of the straightest sect. For example; when the constitution says, that the election shall be held on the first Monday in August, and the law says, that the Sheriff shall open the polls *by* 10 *o'clock*, and keep them open, till *at least one hour before sunset;* why, here it is contended that the voters are entitled to the *whole day*, from midnight of the previous evening, until midnight of the first Monday in August; and that the Sheriff may open the polls immediately after midnight, and keep them open during the whole twenty-four hours. In this case, we must "stick to the letter." But, when the law says, that all votes *shall be given in the presence of the Judges andSheriff*—then we must turn latitudinarians of the ultra school. In this case, gentlemen tell us, that *the law does not mean what it says*, at all. We must give it a *liberal construction.* The Sheriff may absent himself from the county entirely; and yet the votes, given in his absence, will be valid in law. Perhaps gentlemen can reconcile these two modes of construction, as consistent with each other; but I confess my utter inability to do so.

Another gentleman from Kentucky, (Mr. Marshall,) has told us, that among all the precedents referred to, no case can be found where this House has, under circumstances like the present, stricken off the whole, or a part of the votes given in a township, parish, or precinct, on account of the illegal manner of conducting the election; and then given the seat to a candidate, who had a minority of votes, by retaining such poll book; but, a majority, by its rejection. Without stopping now to say how far precedent should control us, in deciding a case of such marked peculiarites, I will inquire of the gentleman, whether this House has not by former decisions established *the principle*, that such poll books are to be rejected; that where the law has been openly violated and disregarded in conducting the election—the votes given shall not be counted in the final addition? That such decisions have been made, and such a principle established, will scarcely be denied. Well, sir, it is for the principle we contend; by that we should be governed. If the constitution and the law, as well as the former judgments of this House, demand the rejection of these votes, we are not to inquire for the consequences to a particular individual; whether it will put him in, or out of a seat. Apply the principle to the facts of the case—let it cut off whomsoever it may.

The gentleman from Georgia (Mr. Clayton) has informed us, that the very existence of representive government is menaced by the report of the committee; and that he firmly believes this case will be decided wrong. From what premises does the gentleman draw his conclusions? How has he ascertained which side is right, and which wrong. How has he learned which of these candidates has a majority of the individual votes given in the fifth District? Has he made a thorough purgation of the polls? Has he, in one short week, the time we have had the printed documents upon our tables—examined the testimony, and decided for himself, upon all the questions involved in the contest? I apprehend he will not say he has! If the gentleman undertakes to pronounce one side right, and the other wrong, without this searching examination, is he not in danger of falling into fatal mistakes? Sir, he kindly admonished the House against allowing party feelings to enter into the decision of this question; but if he permits himself in advance, to pronounce one side right, and the other wrong, is he not in danger of the same pernicious influence, against which he so earnestly warns others? I do not believe that honorable gentlemen have formed their opinions, and steeled their understandings against all argument upon this subject. If so, it would be in vain for me to stand up here, and submit my views, for their consideration. I might as well attempt to struggle with the whirlwind. No, sir, the gentlemen are mistaken with regard to the character of our report. It does not, nor do the principles we advocate, menace the existence of representative government. It does not, nor do we, contend for the doctrine, that a minority shall govern a majority. The report of the committee is based upon the broad principles of inflexible truth, which, sooner or later, will bear down all opposition. Our report is shielded and sustained by the laws and the constitution of the country. It embodies principles that will bear the test of human scrutiny, apply it whensoever and wheresoever you may.

Mr. Speaker, there has been a great deal said, in the course of this discussion, about the *inalienable rights* of voters, and the *inherent right* of suffrage. These rights are neither inherent, nor are they inalienable, as was most conclusively shown by the gentleman from Georgia, (Mr. Jones,) who is a member of the committee. An inherent right of suffrage does not exist; it never did exist. And I am surprised to hear gentlemen of great ability, who have been long in public life, talk of an *inherent right to vote.* They have not considered this subject with their usual care, or they would not indulge in the use of such terms, nor would they attempt to derive arguments from a proposition so wholly untenable. The right of suffrage is not *inherent.* It is derived from the social compact, and did not exist anterior to it. It is not inalienable, for it may be forfeited by those who possess it, in various modes, pointed out in the institutions of the several States of this Union.

What is the right of suffrage? It is a right which I have to bind you. I elect an individual whose acts are obligatory upon you, within the sphere assigned him, no matter whether he is your choice or not. Do I possess this right in a state of nature, independently of the organic laws under which we live? Certainly not. If the right were inherent, all men would possess it. Aliens, females, and minors would possess it; negroes and mulattoes would also claim it. But we all know that such is not the fact. Certain classes of soci-

ety are every where excluded, by the constitution and laws. By the way, sir, while upon this point, I will take occasion to avow the opinion, that a certain portion of the ladies ought to be allowed this right. Man, however, being the "stronger vessel," possessing the power, physical and numerical, has deprived them of this privilege, in every State of the Union.

In a state of nature, every man is a sovereign. He is the sole regulator of his own actions. No man can bind him: no one has a right to interfere with him. But when he enters into society, he surrenders a portion of his natural rights, and submits himself, in a certain degree, to the control of others. The manner in which such control must be exercised, is pointed out with precision, in the constitution and the laws; and to be effective, *it must conform, in every important particular,* to the rules which are thus prescribed. If you attempt to exercise it in any other mode, *your acts are void and impose no obligation whatever.* This proposition is perfectly indisputable: it is as true as Revelation itself.

One gentleman (Mr. Marshall) has informed us, that it is sufficient upon the present occasion, to advert to the constitution of Kentucky; that it *alone* furnishes a sufficient rule to guide this House in its determination. No proposition, in my opinion, could be more erroneous. We must first turn to the constitution of the United States; we may then examine the constitution of Kentucky, and lastly, explore the laws of that commonwealth. From these three sources we can obtain the rules, by which we should be governed. By the first, we are empowered to judge of the elections and qualifications of our own members. By the second and third, the qualifications of voters, and the time, place, and manner of holding elections, are particularly pointed out. Under the constitution of Kentucky, alone, no election could be held. The gentleman stated a case, in which he supposed the People of a district to meet, and in some way to manifest their choice, (without any law) for a particular person, as a representative in this body; that individual arrives here with proof, by affidavits, or otherwise, of such choice, and demands his seat—and the gentleman declares it to be his opinion, that we would yield to the demand. But suppose that one-half, one-third, or even a less number of voters in that district should remonstrate against his right to a place here? Would this House disregard their complaint? I tell the gentleman, that under no circumstances, as I conceive, could such a title be recognised here. Sir, the constitution of the United States presents an insuperable objection to it. It declares (Art. 1st. Sec. 4th) that "the times, places, and manner, of holding elections for Senators and Representatives *shall be prescribed in each State by the Legislature thereof.*" This constitution is the paramount law of the land; and no valid election can be held until the State Legislature has prescribed the rules by which it is to be governed. True, Congress have power to alter these rules; but it must be done by law. This House cannot do it. And until a law is passed by Congress upon the subject, the law of the State must prevail. It is in vain to insist that if the officers appointed by the constituted authorities refuse to serve, any unauthorized person may take their places; that if the law requires thirty day's notice, two days would be sufficient. It is in vain for gentlemen to say, in reply to the able argument of my friend from Georgia, who made this report, that he is adhering to *the letter* of the law, and disregarding its spirit; that this is an age of "*liberal principles.*" Sir, these principles are truly liberal! They lead to the overthrow of all order; of all government. Instead of a government of laws, which is the pride and the boast of every American, they offer us the most wild and lawless anarchy. They would prostrate the valued and established institutions of the country, and transform our whole system into a "MOBOCRACY."

In this contest, two things are admitted, on all hands. There is no difference of opinion, with regard to them. The majority and minority arrive at the same conclusion; and in that conclusion, all the gentlemen who have addressed the House, concur without hesitation. The first is, that there has been an election; and the second, that *a part* of the votes given are to be stricken from the polls. Upon these two points we all agree. But when we come to judge of the particular votes to be rejected, then we disagree. And in determining the various points which arise, it has been well remarked by a gentleman from Kentucky (Mr. Hardin) that this is a case *sui generis,* that it ought to be decided by the constitution and laws of Kentucky, and the practice under them, and not by precedent. If to these he had added the constitution of the United States, I should have been satisfied with the rule he proposed.

Notwithstanding the merits of the whole controversy are properly before the House, yet the votes more immediately under consideration, are those given at Lancaster, in the county of Garrard, whilst Moses V. Grant, Esq., was presiding as judge on Monday morning, and the votes given at the same place on Tuesday, in the absence of the Sheriff. Here I must be allowed to notice a position advanced in the minority report, and in the arguments of several gentlemen, who have discussed this subject. It is said that the majority of the committee *admit* that the votes given on Monday morning, before ten o'clock, would have been good, if Mr. Grant had remained upon the bench throughout the election. Now, sir, the report of the committee contains no such admission, nor have I heard a single member of the committee advocate that doctrine. In the report, it is, in so many words, left undecided. It is remarked that the committee *might not* have rejected the votes, if Grant had continued to act, thus leaving it wholly undetermined. For my own part, I expressly disclaim having made any such admission.

With respect to the legality of the votes taken on Monday morning, it has been repeatedly asserted, that the true question is, Has a Sheriff the right to open the polls before ten o'clock? Upon this hinge, it is insisted, the whole case turns. In this matter, I am compelled to dissent, altogether, from the gentlemen. Whether a Sheriff could, or could not, under ordinary circumstances, all the officers appointed by the County Court being

present, proceed to open the polls before ten o'clock, is not the true issue. In fact, it has little or nothing to do with the point under consideration. The true issue is, can a Sheriff, before ten o'clock, which is the usual hour of opening the polls throughout the State of Kentucky, declare the office of a judge vacant, and appoint whom he pleases to fill the vacancy, when the judge himself is on his way to the place of holding the election—is in sight of the town, if you please—and actually arrives there before ten o'clock? Or, in other words, can the Sheriff *create a vacancy*, by his own arbitrary will, where there is none, either in fact or in law, and thereby thrust from the bench the judge appointed by the court, filling the place with an individual of his own selection? Can this judge occupy the seat for an hour, until the usual time of opening the polls, and then give place to the true judge? and shall the acts of the former be deemed legal, and receive our approbation? The constitution says, that the election shall be held on the first Monday in August; the law provides that the County Court shall appoint two judges, and a clerk of the election, and that the Sheriff shall open the polls *by ten o'clock*. If the judges or clerk do not attend, the Sheriff is required to fill the vacancy. They are to each take an oath of office, *and to attend to receiving the votes, until the election is completed, and a fair statement made of the whole amount thereof*. The practice, under this law in Garrard, is proven to be, to open the polls at 10 o'clock; and this construction, it is believed, has been given to the law throughout the whole State. But, as the phrase "*by ten o'clock*" is used, the gentlemen contend that the Sheriff may open the polls *at any time* between midnight and that hour. Here they are strict constructionists. They would hold us to the *very letter itself*. Upon another branch of the subject, we were told by the gentleman from Pennsylvania, (Mr. Banks,) that the powers of the Sheriff must not be enlarged "by construction." Let us apply that principle here. Let us look a little to the consequences that flow legitimately from the argument. It will not be denied, that the law, in requiring the county Court to select two of their own body to act as judges of the election, intended, that under all ordinary circumstances, the judges who presided should be individuals selected by that respectable body of men; and that it was only in the event of certain contingencies, that the Sheriff should be permitted to select either Judges or Clerk. The practice, under the law, has been in entire conformity to this supposition. But if, as gentlemen contend, the Sheriff can, at any time before the hour of ten, open the polls, and fill all the vacancies that exist *at the time* of opening them; and if the mere fact of the Judges and Clerk not being present at the moment, constitutes a vacancy, then, is the whole object of the law defeated. The Sheriff may, at every election, supersede the officers appointed by the Court, by his own friends, or the friends and creatures of one of the candidates. He can attend at any moment after midnight—open the polls, and having the persons he wishes on the spot, proceed to fill all the offices! It is said they may resign. True. But suppose they do not choose to resign, as they would not in party times, or when a particular object was to be accomplished by their appointment. The Judges and Clerk appointed in pursuance of the law, might attend at the usual hour, and demand their seats; but it would be mere mockery to do so. The individuals selected by the Sheriff, and who probably would never have been chosen for any purpose by the Court, will remain upon the bench, and control and manage the people of the county, in open defiance of their will, and of the plain and palpable meaning of the law. Sir, this doctrine constitutes the Sheriff of the county a monarch! It clothes him with the most alarming powers; powers that were never designed to be given him; and which can only be claimed by a most labored and far-fetched construction of the law. When gentlemen talk of absurd consequences, resulting from the construction which the committee have given to the statute, it would be well for them to follow out the consequences of their own principles.

For what do we contend? Why, that as ten o'clock is the usual hour of opening the polls—the only time named in the law; and as the court have the power to appoint the judges and clerk, and the sheriff only a power to fill vacancies. The manifest intention of all this is, that the sheriff shall wait until ten before he declares the offices vacant, and proceeds to fill them by new appointments. This is no labored construction. It is a fair, a reasonable construction. It establishes a safe rule, that will protect the rights of all concerned. It gives effect to all the provisions of the law, and so construes the various clauses, so that the whole statute may stand unimpaired.

It is amusing, sir, to hear the gentlemen who call this a labored construction, and who insist so strenuously upon our adherence to the language—to the plain *letter* of the law, in this instance, when they arrive at another point, and attempt to show that the presence of the sheriff is not necessary during the progress of the election. They admit that the law says the votes shall be given *in the presence of the judges and the sheriff*, and yet contend that the sheriff need not be present; that he may leave the town and call some one of the neighbors to cry the votes and discharge the various duties of the presiding officer. He may ride through the county electioneering for one of the candidates, or employ himself in any manner he pleases; and yet, all that is done in his absence is valid and deserves our unqualified sanction. So bold did this position appear to the gentleman from Kentucky (Mr. Hardin) who last addressed the House, that he endeavored to avoid it by a more circuitous route. He contended that Mr. Spillman, who cried votes in the absence of the sheriff, was a deputy, and his acts were therefore legal.

Let us examine this ground. How was he appointed a deputy? Had he a warrant, or certificate of appointment? None, whatever. Was he sworn? Not at all; yet the law requires that he should be. Was he requested to do an official act? No. The gentleman informs us, that the law does not require votes to be cried; that it is only a practice that has grown up in the State. The only act which the Sheriff asked Spill-

man to perform, was, to cry the votes. Yet the gentleman says that he was a deputy. No certificate—no oath—not even required to do an official act; and yet a deputy Sheriff of Garrard county! Sir, the gentleman complained of the "sophistical reasoning" of those who differed with him in opinion; but if this be sound reasoning, then I confess that all the rules which I have been taught, for the purpose of distinguishing true from false reasoning, are utterly delusive and erroneous.

Mr. Speaker, there is but one safe ground to occupy, in relation to this whole subject. The constitution and laws of society have prescribed certain rules, by which elections shall be conducted. To these we must look, in every contest: by these we must abide, in all our decisions. An election which has not been held in accordance with them, is absolutely void.

What is the object of these rules? Is it not to secure to us a good Government? to give order, stability, and security, to the body politic? It is, sir. Those who framed them, intended to protect us, equally, from the iron tyranny of a despot, and from the uncertain, capricious sway of an uncontrollable mob. This can never be accomplished, but by adhering to the rules, as they have been established. Yet gentlemen contend, that the People are not bound to know the rules; they are not required to know the law! Is not this a strange doctrine, to be advocated by legal gentlemen; to be advocated by lawyers of long practice, and of high eminence in their profession? Sir, one of the first lessons taught in the legal science —one of the fundamental principles upon which all judicial proceedings are predicated—is, that every man is bound to know the law. What would be thought of an individual, arraigned in Court for an offence, who should plead that he did not know the law, and was not bound to know it? What would be said to a party, in a civil case, who would attempt to set up such a defence? They would both be silenced by the Court; and that, too, with the approbation of every lawyer in the country.

Again, we are told, that we ought to decide this question upon principles of equity; that we must not be technical; but must be guided by the justice of the case. I have, more than once, heard very much such arguments in Court. An advocate, finding all the principles of law against him, appeals to what *he calls* equity and justice. He implores the court and jury to remember that it is a *hard case*, and that it is their duty *to do what is right*, between the parties. Do we not all know, to what this argument leads? It has been well remarked by an eminent writer, that if even a court of equity should disregard certain general rules and principles, that all our rights would depend upon the arbitrary will of the court; upon the notions entertained by the judge of what was right and what was wrong. One judge would decide a cause one way, and another would decide a similar cause differently. We should have no rule but the dictates of the chancellor's conscience, or the length of his foot! The laws furnish a certain criterion by which all our rights can be determined. Disregard these and you set up in their place, the opinions, notions, and feelings of the court and jury, in every case that comes before them. Are gentlemen prepared for this? Are they willing to set aside the election laws of the States, and be governed by the opinions of the honorable members of this House? For my part I can never sanction such a state of things; nor can I countenance principles that must inevitably lead to such a revolution. In the language of the Pittsburgh memorial, read here the other day, I go "for the supremacy of the laws and constitution of my country."

Nearly allied to the argument which I have just considered, is another one equally fallacious, when applied to this election. The gentleman from Pennsylvania, (Mr. Banks,) insists that Grant was acting *under color of authority*, and that his acts were therefore good; *that he sat in the place of a judge;* that he had all the emblems of authority about him, and the people were not bound to inquire whether he was legally authorized to receive votes or not. Apply this doctrine to the practical concerns of life. Suppose a person comes to your house claiming to be the tax gatherer of the county. He has a book containing the names of yourself and neighbors; with an amount of chattel and land tax against each one. He is a decent, gentlemanly looking personage, and you have no reason to doubt his being fully authorized to receive your taxes. You pay him and take his receipt. But, to your utter astonishment, on the next day, the proper officer,appointed by the government to collect the revenue, appears at your door and demands the payment of your quota of the public levy! Will your receipt protect you? Will it do to talk about the stranger's having the color of authority or of office? Why we all know it would not. Suppose again, that there is a judgment against you in court, for a sum of money. An individual professing to be a sheriff or deputy sheriff, but who is not so, calls upon you and demands payment of the amount. You discharge the debt and take a receipt; will it protect you when the true officer appears? Sir, it would be worse than idle to talk to him about the color of office or authority. The money would have to be paid again.

The answer to all that has been advanced upon this point, is, that there is a wide difference between acts that are *void*, and those that are only *voidable*. Every lawyer is aware of this. When a man undertakes to discharge the duties of a public officer, by virtue of an appointment, or authority, that is merely defective, or informal in some particular, but which has been conferred by the proper tribunal, then his acts are not to prejudice third persons. Individuals are allowed to recognise him as a public officer, without inquiring into all the merits of his title to such distinction. As for instance, if an office becomes vacant and the persons authorized to fill the vacancy, make an appointment, which is not made, however, in exact conformity to law—which is defective in its form, here individuals might be protected by his acts. But, when an appointment is wholly nugatory in its inception; when it is void in the first instance—as in the case of this judge; when it is made to fill a vacancy, *that has not happened —that does not exist*—then, all his acts are total-

ly void; they neither protect himself, nor any one else. They can neither be recognised in a Court of Justice, nor before any other tribunal that pretends to be governed by law.

Throughout this discussion, as well as in the report of the minority, there is one point to which our attention is earnestly called. It is said, sir, that the chief, if not the only, inquiry should be, *were the persons who voted*, properly qualified to do so, according to the constitution? If so, it is but of little consequence who presided. To this proposition we are constantly referred. Of its peculiarly important character, we are perpetually reminded. It seems, from the arguments of honorable members, to possess a paramount interest over every other consideration that has been named. They present it in every variety of shape and surface. It is decorated with all the ornaments that the most fertile imagination can be tow. They cling to it with the violence of a shipwrecked mariner, who feels that his only hope is the plank in his grasp, and that some more powerful arm is tearing even that plank from his possession. We are urged to concede the point, with a degree of earnestness and eloquence that require the utmost strength and resolution to resist the overpowering influence.

For one, sir, I beg to be excused. The position itself is wholly defenceless; and I cannot but believe, that gentlemen will find it so, upon a closer examination. What is an election? One gentleman (Mr. Marshall) informed us that it was an expression of the choice of a majority of the voters. This is a sound definition, so far as it goes. It is the truth; but it is not the whole truth. An election is an expression of the will of a majority of the voters, *manifested, according to the provisions of the constitution and laws.* Unless their choice is made known, in the mode prescribed by these, the act is void—*it is no election;* it binds no one; it confers no privilege whatever. What do these instruments require? They not only define, particularly, who may vote, but they point out, specifically, the time, place, and manner of voting. They not only declare *who may give votes*, but they are equally precise in declaring *who shall receive the votes so given.* There must be both GIVERS and RECEIVERS. We can no more have an election without some tribunal to receive and record the votes, than we can without some person to give the votes, which the law requires to be recorded. Is there a doubt about this? Is not one as necessary, both by the law, and from the very nature of things, as the other? Does not the truth of this proposition strike every mind with irresistible force? It does, sir. And you might as well wage war with the tempest in its mad career, as undertake to combat a principle so far beyond the reach of refutation.

By an election, a part of the community appoint public agents, or servants, whose acts are obligatory upon all. Yes, sir, I repeat it, they appoint public servants; for democrats as we are; republicans as we may profess to be, or "*whigs*" as we may have recently become—we are too apt to forget "the rock from which we have been hewn;" and it is well for us to be reminded, that we are but servants to the great mass of our fellow citizens—bound by their will, and responsible to them, for all our conduct. But, the acts of the agent *are not, and ought not to be, binding upon all*—unless made according to law. A more obvious truism could scarcely be presented to the human understanding. Yet the minority of the committee boldly avow the doctrine, and are sustained by the arguments advanced upon this floor, that if persons, *having no authority whatever*, should drag the judges from the bench, and *usurp* the authority to preside over the election—their acts would be legal—the election would be valid—and the candidate having a majority of votes, thus bestowed, would be entitled to a seat in this House! I confess, sir, that I am startled, when I hear such principles avowed in the House of Representatives of the United States. I am the more amazed, when these disorganizing theories are put forth by honorable members, who have been so loud and so vehement against the President and the Secretary of the Treasury, for alleged usurpations and violations of law, with regard to the United States Bank and the public revenues of the country. Why have they so suddenly become the advocates of "usurpers?" Is not usurpation the same in every department of the Government? Sir, I am against it, let it come in what shape, or from what quarter it may. I oppose it, in judges of an election—I oppose it in this House—I denounce it in the Senate—and convince me, that the Executive has been guilty of it, and I will condemn him, as freely and cordially, as I now support him. The gentleman from Kentucky (Mr. Marshall) insisted, that the Sheriff could make a temporary appointment of Judges. This he inferred from the facts, that the judges and clerk hold their offices for a year; and as there might be more than one election during that period, and they might be absent from one and present at the others—it would be necessary for the Sheriff to appoint officers to serve during their absence. Suppose this to be so, does it legalize Grant's appointment? Clearly not. For he was appointed before the vacancy occurred; and he left the Bench at ten o'clock;—when the law declares that the judges and clerk appointed, shall attend to receiving votes, *until the election is completed, and shall then certify the same.* Here, the judge leaves the Bench before the election is closed, he does not count the votes taken, whilst he was presiding; and he makes no certificate at all, of what was done during the time he officiated. Mr. Wheeler, who succeeded him, could not certify to what was done, before he came to town; and so far as his certificate purports to cover Grant's doings, it is a nullity. If, therefore, the Sheriff could appoint a judge to preside during one election in the year, it by no means follows, that he can appoint one to officiate for an hour or two; and then absent himself without leaving behind him the slightest traces of his official existence.

We have heard, sir, that Mr. Grant was sworn as a judge. By reference to the depositions, it will be seen that this is very doubtful. The sheriff testifies that *he believes* Mr. Grant was sworn, and that H. McKee, Esq. administered the oath. But in another part of his deposition he states that

he appointed Grant, because there was no other justice in town. How then could Esquire McKee be there to swear the persons appointed? It is extremely probable that the sheriff is mistaken, and that they were not sworn at all.

Somewhat akin to this is another argument of a gentleman from Kentucky, (Mr. Hardin,) who, in order to connect and legalize the acts of Grant and Wheeler, contended that *Grant resigned* at ten o'clock! Yes, sir, the sheriff appointed Grant at nine o'clock, to fill the vacancy occasioned by the absence of Wheeler; Grant took his seat; he had no written appointment; there is no record or entry made of it; it is uncertain whether he was even sworn. He remains at the bench till ten, the usual hour of opening the polls, when Mr. Wheeler arrives and takes Grant's place; or, according to the gentleman, Grant "*resigns*," and, I suppose, Wheeler was appointed to fill the vacancy occasioned by Grant's *resignation*. No entry is made of the resignation; none of the new appointment of Wheeler. Yet we are told that this is all legal; and that too, by an honorable member who charges others with resorting to "sophistical" reasoning and "cob-web technicalities." Such arguments as these may be very cogent and conclusive. To me, however, they appear but bubbles, floating upon the surface of the stream. Gilded by the sunbeams, they reflect all the gaudy coloring of the rainbow; touched by the spear of truth, they burst without either noise or resistance.

Having shown, I trust, that the votes taken on Monday before ten o'clock, whilst Moses Grant acted as judge, were not received according to law; that the whole procedure was illegal and void; and that the votes so taken must be rejected, I shall now ask the attention of the House, whilst I submit a few observations relative to the votes taken in the absence of the sheriff on Tuesday. These, I am satisfied, are illegal also, and ought not to be counted, in deciding upon the claims of the candidates.

The sheriff in Kentucky possesses very important powers with respect to the elections; but they are not quite so extensive as the gentlemen have supposed. He is required by law to open the polls; he presides and keeps order; he scrutinizes the qualifications of the electors; unless the individual is known to him, or to one of the judges, an oath is administered by the clerk as to his right of voting. If the judges are divided in opinion, the sheriff gives the casting voice, and settles the right of the voter.

When the vote is given, he cries it; when the election is over, he closes the polls, takes charge of the poll books, and carries them to the place of meeting; where all the Sheriffs in the district convene, to compare and add the whole number of votes, and give a certificate to the candidate elected. In addition to this, the law expressly requires, that the votes shall be given *in the presence of the Judges* AND THE SHERIFF. One would suppose that language could not well be made plainer, and that there could be but one opinion about the true construction of this law. Yet, strange to tell, our opinions differ as widely as the poles. The same gentlemen who are for conferring such alarming powers upon this officer, with regard to opening the polls, filling vacancies, &c. would have us believe, upon this branch of the subject, that his powers and duties are almost nominal. They inform us that he merely keeps order, that he only cries the votes by custom, that he gives all the information to the Judges which he can, and has no voice, except as a witness, in controlling the rights of the electors! In attempting to explain away the law, and make it wholly inoperative, so far as it requires the Sheriff to be present when the votes are given, the gentlemen have insisted, that he is not a judge of the election; that he does not decide upon the rights of the voters, (although the proof is exactly the reverse in this case,) and that, therefore, his absence is an immaterial circumstance.

To establish this position, much stress has been laid upon the fact, that the judges selected by the county Court are compelled to take an oath of office, *as judges of the election;* but the Sheriff is not. They are justices of the peace, selected from among the members of the county Court; they have, of course, taken an oath of office, before they are called upon to act as judges of the election. Yet, the law requires them to be sworn again. So of the Sheriff; he is a high officer, well known to the law. He, too, has taken an oath of office. But when he is called upon to preside at the election, he is not required to be sworn *as a judge*. Here the honorable gentlemen seemed to congratulate themselves upon the discovery of what they are pleased to call "a marked distinction" between the Sheriff and the judges. They pause at this point, and inquire, exultingly, why this "marked distinction" between the provisions of the law relating to these respective officers, if it were intended that he should perform, in any respect, the functions of a judge? Here, they appear to think that the committee is completely hemmed up, without the possibility of escape.

It is strange, how we often delude ourselves and others, by looking only at one side of a question, or by deciding upon it without taking time for reflection. The difficulty which gentlemen have conjured up, is readily removed. It is a problem that may be solved with the utmost facility. I will tell the honorable members why this distinction is made. The Sheriff holds his office for two years; it is a part of his official duty to preside at every election which is held in the county during that period. Hence, when he takes an oath of office, the obligation to preside at elections is included in the oath; just as much so as any other part of his official duty. Nothing is clearer than this.

But it is not so with the justices. A man may be a justice of the peace for fifty years, and never act as a judge of the election. The county Court is composed of all the justices in the county, and meets monthly. At their annual meeting, preceding the August election, they are to select two members from their own body, to act as judges at the election. They may select the same two persons, year after year, if they choose, for a quarter of a century. Where there are from twenty to a hundred justices in the county, many of them may never act as judges of an election, during their lives. Still, they are going on discharging all

their duties as justices of the peace, both as single magistrates, and as members of the county court. To ensure the faithful performance of these, an oath of office is administered to them when they are first commissioned. But should they, in the course of their lives, be appointed by the Court as judges of the election, which is a *separate and distinct office*, then they are sworn faithfully to discharge the duties appertaining to their *new appointment*. Is not this a solution of the problem? It appears so to me; and I hope the gentlemen are satisfactorily answered.

The law peremptorily requires the votes to be given in *the presence of the Sheriff*. The fact is in proof, that they were not so given. He was absent from the place of holding the election during the greater part of the day, and at the time these votes were given, he had no deputy there. The evidence upon these points is unquestionable; unless we adopt the theory of the gentleman from Kentucky (Mr. Hardin,) that Spillman became a deputy by a bare request, that he would cry the votes given. I have already expressed my opinion with regard to this proposition, and do not think it possible to add any thing to the argument of my friend from Georgia (Mr. Jones) upon this subject. He totally demolished the whole superstructure.

If then, the law, and the facts are as I have stated them to be, how can any one pretend that these votes are valid and ought to be counted upon the present occasion? Will any one insist, in this instance also, that it is *a hard case;* that the Sheriff was necessarily absent; that this is a mere formality? Sir, we must either conduct the election according to law, or not. If we can dispense with the Sheriff, we can, upon the same principle excuse one of the judges from attendance; if we can allow one to go, we can spare both, and the clerk with them! Where will it end? That is the question. Can you place bounds to this principle? If so, where are they to be found? The moment we abandon the law, we are afloat upon the broad ocean of uncertainty, where we shall be drifted by the wind and tide among rocks and whirlpools, where nothing but the arm of Omnipotence can save us from destruction.

I cannot see how any friend of State rights can think of adopting the doctrines contended for upon the other side. The States have the power to regulate the time, place, and manner, of holding the elections. It is expressly recognised in the federal constitution, as I have already observed. The State of Kentucky, as well as all others in the Union, has exercised this right, and fixed THE MANNER of holding the election. Without a substantial conformity to the rule she has adopted, the election is void—just so far as it is contrary to the law. The cases of Jackson and Wayne, and Scott and Easton, both decided in this House, have settled that principle. To disregard the law of the State and confirm an election merely upon our own ideas of justice, would be a most flagrant act of usurpation. We may talk of State rights as much as we please; we may be friendly to the doctrine whilst it is our interest to be so; we may deprecate, in the most vehement and eloquent language, the tendency of this federal government to absorb all the reserved rights of the People and of the States; but if we disregard the laws of the States, enacted upon a subject expressly reserved for their legislation, and substitute our own will for their solemn statutes—I boldly assert, that we shall have established a principle which will destroy the last vestige of liberty, reserved to the members of this confederacy. Such a principle carried out, must lead to the concentration of all power in the General Government. It would overleap the barriers erected between the authority of the central government, and the rights and powers of the several States of this Union—and would, in the end, lead to a tyranny as odious as the most absolute despotism.

Having shown, I think, that the twenty-five votes given at Lancaster on Monday, whilst M. Grant, Esq. was presiding, and the forty-five given on Tuesday, at the same place, in the absence of the Sheriff, ought not to be received, I will very briefly notice some other points that have been touched in this discussion.

The gentleman last up, (Mr. Hardin,) spoke of the students at Danville College, whose votes have been stricken from the polls. The constitution of Kentucky gives the right of suffrage to individuals, who reside in the State two years, or in the county one year, and requires them to vote in the county or precinct where they actually reside at the time of the election. The majority of the committee believed, that the constitution did not intend that *residence, alone,* in the most unlimited sense of that word, should bestow the right of suffrage. If this were so, aliens who might reside a year in any one county, would thereby entitle themselves to this high immunity. We believed that this clause deserved a fair and reasonable construction, and that the residence intended, was a *permanent residence* for the time—an actual home or domicil in the State. In this view of the question, we found ourselves sustained by a decision of the Senate of that Commonwealth, in a contested election between Williams and Mason. Upon that occasion, it was determined that a citizen of Kentucky, who had been out of the State for five years, had not lost the right of suffrage. There was no proof that he left the State *permanently* to reside elsewhere. This was undoubtedly a correct decision. In ascertaining the home of an individual, almost the whole inquiry turns upon the *intention* of the voter. Did he leave the State with *an intention not to return?* Was he absent on a visit, or on business, or did he abandon the country?

Now, we have only to reverse this rule, that it may aid us in deciding the rights of students at a college, or transient persons of any description. What is their business in Danville, having come there from other States and counties, and remained in that place for two or three years? Is it to become citizens of that county, or of the State? Is it to reside, *permanently,* and to amalgamate with the people there, or is it to obtain an education, and then leave the place? Are they in the town as citizens, having selected it as a home, or are they only there for a temporary purpose, the time of their stay being necessarily limited? These were questions which the committee had to consi-

der for themselves; and the conclusion at which they arrived, was, that the residence of a young man at school or college, for the sole purpose of pursuing his studies, is not *such a residence* as confers the right of suffrage.

In this opinion, they were not only confirmed by the authorities which they consulted, but by the general understanding of the community. No father believes when he sends his son from Ohio to Kentucky to obtain an education, that by such removal the son ceases to be an Ohioan, and becomes a citizen of Kentucky. Does the son expect, that when he returns to his former residence, he will be treated as a foreigner, and compelled to undergo a quarantine in his native county, before he can exercise the rights of citizenship? Surely, this is not the doctrine which prevails among the citizens of the several States, who send their sons from home to be educated. Yet to such results must we come, if we permit students to exercise the right of suffrage, *merely*, on the ground of their residence at college. It will hardly be pretended that they possess this right in two or three States at the same time.

Whilst upon this subject, I will remark, that we decided two cases with great facility and unanimity. They were the cases of Wiley and Highee. The former had been a student at Danville, for several years; he returned home to Garrard county just before the election, voted, and came back to the College in Mercer, soon after the election, to pursue his studies. The other was a student at the law school in Lexington, Fayette county. He came down to his father's, in Jessamine, a few days before the election, voted, and returned to Lexington. In both cases, the committee decided these votes to be good; and as the gentleman from Pennsylvania said of the appointment of Grant, *no one complained of our decision*. They both voted for Mr. Letcher.

Apply the same principle to the other students at Danville, who came there from distant States and counties, and their votes must be excluded. It was upon this principle the committee decided; and in the opinion of a majority, ten votes were necessarily stricken from the polls as illegal.

Another decision of the majority has been the subject of animadversion. I allude to the votes which are alleged to have been improperly entered upon the poll book; or to have been omitted by the Clerk entirely. There are several of these on both sides; and proof was taken by the parties to establish the facts.

Under all the circumstances, the committee deemed it safer to rely upon the poll books—the records made by respectable men under oath, than to permit individuals to come forward, and change the whole face of the poll book and the result of the election, by swearing that they voted, and their names have not been recorded—or that they voted for a different candidate from the one in whose favor their names are recorded. We were not prepared to say, that a case might not be presented, in which it would be proper to alter the record by parol testimony; but we were clearly of the opinion, that this was not such a case. No change, therefore, was made.

The committee were strengthened in their position, by the decision of the Senate of Kentucky, in the case before referred to, of Williams and Mason. Having such respectable authority, in aid of the reasons which arise from the nature of the question, and which will suggest themselves to the mind of every gentleman, we determined to leave the poll books as we found them.

Mr. Speaker, the case of Wilkes and Luttrell has been introduced here, during this debate, and for what purpose, I know not. Is it believed by the gentlemen to be an analogous case? In what does the analogy consist? Do they fear that this case will be improperly decided, as that unquestionably was? If it should be, I ardently hope sir, that some modern Junius may be found, who will rouse the public attention to the subject, and never lay down his pen, until he has the satisfaction to see his opinions universally adopted as a standard, and the erroneous judgment of this House expunged from our journals.

It is some time since I read the history of the case under consideration. According to my recollection of it, Wilkes was expelled by a vote of the House of Commons The People re-elected him, by a very large majority over his competitor, Col. Luttrell. He appeared at the door of the House of Commons, and demanded his seat; but the House determined, that his *previous expulsion disqualified him from holding a seat;* and that the votes given to him were void. Upon these principles they decided, and gave the seat to his competitor. They did wrong in this. Such a disqualification as they recognised, arising from *expulsion*, was wholly unknown to the constitution and laws of England. Even Judge Blackstone, who had written expressly upon this subject, and had not mentioned any such disqualification, was induced to come out in defence of the decision of the House. But with all his ability and learning, he was unable to sustain it; and those who took the other side of the question had no difficulty in holding him up to the public gaze, as a fit subject for the ridicule of all, who ranged themselves under the banner of constitutional freedom.

How do the principles of that case apply here? Who sets up *new rules* in this controversy? Do we? No, sir, we ask for no innovation. We want no *new test*. We do not complain of the criterion, by which such cases have been formerly determined. On the contrary, it is the very thing we desire. We call upon the House to conform to it. We deprecate all rules, except those which are derived from the constitution and laws of our country.

One word more, sir, and I am done. I have now given my views of this subject, with some of the reasons that induce me to entertain them. It is for the House to decide, who is right and who is wrong. With that decision I shall content myself, let it be what it may; believing that I have discharged my duty, and that other gentlemen will discharge theirs, according to the dictates of their own understandings. But, I shall be pardoned for saying, that I do most solemnly believe, if the principles advanced by the majority of the committee are adopted, then, we sanction a rule, that will secure to us all the privileges guarantied by

the charters of American liberty. On the contrary, if the doctrines maintained by the gentleman who oppose us, shall be ratified by a decision of this House, and carried out to their legitimate consequences, we adopt a rule of the most pernicious character; a principle, which, like a slow and deadly poison, will infuse its baleful influence through all our political institutions; until the proud and glorious fabric, erected by the labors, and cemented by the blood, of a valiant ancestry, will crumble into dust in the presence of their descendants, who will have lost the power to preserve an inheritance of such inestimable value.